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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,305	11/13/2000	Hieu T. Nguyen	NUY 301	8618

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EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/712305

Applicant(s)

Nguyen

Examiner

Jerome W Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Prior art 11/13/02 1/21/03
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42 is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected. 1-8, 10-21, 24-41 and 43-48
- 7) ☒ Claim(s) 9, 22+23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Jerome W. Donnelly  
Primary Examiner

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Claims 9,22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 22 and 23 are would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 42 is allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10,11,16,41,45,47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Stearns et al.

Stearns discloses an exercising device comprising a frame, let and right pedals connected to the frame said pedals simultaneously moving in a horizontal and a vertical direction as they rotate around the fly wheel (10,20), which will also be designated as a pedal support which interconnects each of the pedals to the frame.

In regard to claims 3-5 members (150,190 and 200) are considered as a horizontal guide. Said guide being coupled to a pedal and roller assemblies (184,198) being coupled to say guides and allowing the pedals to slide in a horizontal direction.

In regard to claim 10 elements 164,166 may be considered as a/or a motion translation mechanism.

In regard to claim 11 the motion translation linkages as broadly claimed move said pedals in a vertical direction.

In regard to claim 16 as broadly claimed elements 164 and 166 may be considered as a/or a motion translation linkage adapted to link each of the pedals for reciprocal motion in a horizontal direction.

Claims 1,2,7,8,10,11,13,14,41,45 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Neuberg et al.

Neuberg et al discloses a device comprising a frame, left and right pedals connected to the frame, said pedals movable in a vertical direction, pedal support (154) interconnecting the pedals to the frame, vertical guides (72), rollers, upright supports and inherently means by which the rollers are mounted and support the rollers.

In regard to claim 10,11,13 and 14 note linkage 102 and 124.

Claim 41 is inherent in the devices structure.

In regard to claim 45 Neuberg et al discloses a resistance system.

In regard to claim 47 note the vertical path of the pedals of Neuberg et al.

Claims 15 and 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Maresh.

In regard to claim 15 Maresh discloses a device comprising left and right pedals interconnected to a frame, adapted to move in a substantially vertical direction said device comprising pedal supports, said pedal supports further comprising a motion translation mechanism in the form of a chain and sprockets.

Claims 1,2,10,16,18,19,20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang.

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Chang discloses an exercise device comprising a frame, pedals supports (10,11,12) connecting the pedal to the frame, said pedal support assembly further including a motion translation mechanism (as shown in Fig 2)

In regard to claim 21 the pulley's disclosed in Fig 2 show shaft members.

Claims 1, 2, 10, 24, 25, 27, 29, 31, 33, 34, 36 and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Eschenbach.

Eschenbach discloses a device comprising; a frame, left and right pedals, a motion translation mechanism (10,12,27,18 and 20), a resistance system (56,60) which is considered as a horizontal motion and vertical motion resistance mechanism and is coupled to a motion translation linkage (30,32) which produces horizontal and vertical motion.

In regard to claim 27 and 29 element 60 is considered as an electro-magnetic motor.

In regard to claim 33 not control arm 50

In regard to claim 34 note col.4 line 24.

In regard to claims 36 and 38, 39, 40 and 41 note col.3 lines 20-60. The elements included in the adjustment of the pedal patterns may and are for examination purposes considered as part of the resistance means.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 26,28,30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eschenbach.

In regard to claims 26,28,30 and 32 (note col.5, line 47) the examiner notes that it would have been obvious to one of the ordinary skill in the art substitute the current resistance mechanism for one of the following; a friction brake or a hydraulic cylinder as known and obvious resistance forms in the art of exercising.

Claims 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon.

Gordon discloses an exercise device comprising a frame (12) a pair of pedals (20,22) a horizontal motion translation linkage (32) coupled to each of the pedals and a vertical motion translation linkage (54) coupled to each of the pedals and configured to link the vertical motion of the pedals.

Claims 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eschenbach in view of Bond et al.

Eschenbach discloses the device of claim 35 substantially as claimed absent the feature of a position encoder and an electronic controller as claimed.

Bond however discloses a position encoder in the form of a position sensor, see col.4 lines 13-24.

Given the above teachings the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a position encoder and an electronic controller on the device of Eschenbach for the purpose of sensing the position of pedal and an electronic controller to

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receive information on the position of the pedals, to apply resistance to the pedal via a resistance subsystem based on the sensed motion and/or position of the pedals.

Claims 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eschenbach in view of Kuo.

Eschenbach discloses the device of claim 37 substantially as claimed absent a display.

Kuo discloses a device comprising a display.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to include a display intrigal to device of eschenbach for the purpose of displaying operational and instructional information.

Claims 56,8,12 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to how the same roller mounts of claim 8 are simultaneously coupled to the vertical channels and coupled to a horizontal guide.

In claims 12 and 17 it is unclear as to what components of the device are being claimed as a rack and pinion. Is the applicant claiming a gear configuration or a linkage arrangement.

Claim 6 fails to further limit the device as claimed in claims s, by including the "slidingly.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number 703-308-2668.



Jerome W. Donnelly  
Primary Examiner